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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,181	03/17/2004	Mike Nick Zembillas	ZD05/01	3860

7590 01/06/2005
Edward P. Dutkiewicz
640 Douglas Avenue
Dunedin, FL 34698

EXAMINER

FRISTOE JR, JOHN K

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 01/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/802,181	Applicant(s) ZEMBILLAS, MIKE NICK	
	Examiner John K. Fristoe Jr.	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 2-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Objections

2. Claims 1, 2 and 10 are objected to because of the following informalities: in claim 1, lines 41-42, "the extension members" should be changed to "the extension member". In claim 2, line 15, "the handle" should be changed to "a handle". In claim 10, line 16, "the handle" should be changed to "a handle". Appropriate correction is required.

Double Patenting

3. Applicant is advised that should claims 2-8 be found allowable, claim 10 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Art Unit: 3751

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/701,811. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of Application No. 10/701,811 "anticipates" Application claim 1. Accordingly, Application claim 1 is not patentably distinct from Application No. 10/701,811 claim 1.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Here Application No. 10/701, 811 claim 1 requires:

A water valve system comprising:

- A vehicle having a front end and a rear end;
- The vehicle having rear wheels;
- A drain pipe having an input end and an output end;
- The drain pipe being located between the rear wheels and rear end;
- A 180 degree circumferential slot;
- A gate collar;
- A lever collar;
- A gate valve;
- A drive rod having a c-shaped hook and a turnbuckle;
- A gate shield having a first end and a second end having an aperture;
- A pair of elastomeric rings;
- A lever assembly including extension members having a first end and a second end with an aperture having a nut and a bolt through the aperture;
- A lever having a loop;
- A handle having an intermediate extent;
- The intermediate extent being slidably received in the c-shaped hook; and
- Wherein the lever is a second-class lever.

While Application claim 1 requires:

A water valve system comprising:

- A vehicle having a front end and a rear end;

Art Unit: 3751

- The vehicle having rear wheels;
- A drain pipe having an input end and an output end;
- The drain pipe being located between the rear wheels and rear end;
- A 180 degree circumferential slot;
- A gate collar;
- A lever collar;
- A gate valve;
- A drive rod having a c-shaped hook and a turnbuckle;
- A gate shield having a first end and a second end having an aperture;
- A pair of elastomeric rings;
- A lever assembly having an extension member having a first end and a second end with an aperture having a nut and a bolt through the aperture;
- A lever having a loop;
- A handle having an intermediate extent;
- The intermediate extent being slidably received in the c-shaped hook; and
- Wherein the lever is a second-class lever.

Thus, it is apparent that the more specific Application No. 10/701,811 claim 1 encompasses Application claim 1. Following the rationale in *In re Goodman* cited in the preceding paragraph, where Applicant has once been granted a patent containing a claim for the specific or narrower invention, Applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer. Note that since Application claim 1 is anticipated by Application No. 10/701,811 claim 1 and since anticipation

Art Unit: 3751

in the epitome of obviousness, then Application claim 1 is obvious over Application No.

10/701,811 claim 1.

Allowable Subject Matter

6. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 5,439,198 (Reed) discloses a gate valve having a lever actuator.

U.S. Pat. No. 909,921 (Markman) discloses a gate valve having a lever actuator.

U.S. Pat. No. 4,483,509 (Lewcock et al.) disclose a gate valve having a lever actuator.

U.S. Pat. No. 4,026,517 (Still) discloses a gate valve having a lever actuator.

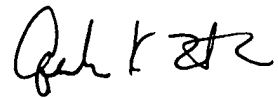
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John K. Fristoe Jr. whose telephone number is (571) 272-4926.

The examiner can normally be reached on Monday-Friday, 7: 00 a.m-4: 30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John K. Fristoe Jr.
Examiner
Art Unit 3751

JKF



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